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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/759,360

01/16/2004

Peter Visconti

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11/05/2008

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EXAMINER

MACNEILL, ELIZABETH

ART UNIT

PAPER NUMBER

3767

NOTIFICATION DATE

DELIVERY MODE

11/05/2008

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com

Patent_Mail@arentfox.com

IPMatters@arentfox.com

Office Action Summary	Application No. 10/759,360	Applicant(s) VISCONTI ET AL.	
	Examiner ELIZABETH R. MACNEILL	Art Unit 3767	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-13, 16-28 and 58-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-13, 16-28 and 58-60 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>9/2/08</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2 September 2008 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 10-13, 17-22, 58, and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Moutafis et al (US 6,216,573) in view of Natwick et al (US 5,158,437).

Moutafis teaches a cartridge cassette (28) comprising:

A pumping chamber (94) defined by a diaphragm (86) which cooperates with a reciprocating pumping actuator (Fig 2);

Means for removably connecting the cartridge to the pump (tab 84);

An upstream valve (98);

A downstream valve (114).

Moutafis shows that parts of the valves are parallel (106 is parallel to 112) but some parts are not (Fig 3).

Natwick teaches a pump cartridge with inlet and outlet valves that are fully parallel to each other (Fig 16-17).

At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art make the valves of Moutafis fully parallel because Applicant has not disclosed that parallel valves provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Moutafis's cartridge, and applicant's invention, to perform equally well with either the off-set valves of Moutafis or the claimed parallel valves because both valve arrangements would perform the same function of supplying fluids to and from the pump chamber while prevents backflow.

Therefore, it would have been prima facie obvious to modify Moutafis to obtain the invention as specified because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Moutafis. Furthermore, it has been proven successful in the art to use fully parallel valves as taught by Natwick and one of ordinary skill in the art would have a reasonable expectation of success in modifying Moutafis to contain parallel valves.

As to claim 11, 18, see tubing 32. As to claim 12, 19, 20 see Fig 3 showing spring biased poppet valves. As to claim 13, 17, see recess (above 84 on the cassette) and tab (140) on the pump.

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4. Claims 16, 23-28 and 60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Natwick and Moutafis as applied to claims above, and further in view of Minick (US 5,462,256).

Natwick and Moutafis do not teach a diaphragm with a graduated cross-section. Minick teaches a pump cartridge with a graduated cross section diaphragm (Fig 3, 17). It would have been obvious to one ordinary skill in the art at the time the invention was made to use a graduated cross section since it has been held that improving similar devices in the same way is within the skill of an ordinary worker in the art.

Response to Arguments

5. Applicant's arguments with respect to claims 10-13, 16-28, and 58-60 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ELIZABETH R. MACNEILL whose telephone number is (571)272-9970. The examiner can normally be reached on 9:00-5:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Simons can be reached on (571) 272-4965. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Elizabeth R MacNeill/

Examiner, Art Unit 3767

/Kevin C. Sirmons/

Supervisory Patent Examiner, Art Unit 3767